

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

MARTHA EVANS

PLAINTIFF

VERSUS

CIVIL ACTION NO. 3:19-cv-318-CWR-MTP

**NANCY A. BERRYHILL,
*Commissioner of Social Security***

DEFENDANT

ORDER

THIS MATTER is before the Court on Defendant's Motion to Dismiss [11] Plaintiff's Complaint [1] as untimely. The motion included a 33-page exhibit and urged the Court to consider these materials in deciding the motion. Although the motion was filed under Rule 12(b)(1), it is more appropriately considered under Rule 12(b)(6). *See Brown v. Soc. Sec. Admin.*, 2019 WL 6799769, at *2-3 (E.D. La. Dec. 13, 2019); *Triplett v. Heckler*, 767 F.2d 210, 212 (5th Cir. 1985).

When a 12(b)(6) motion contains materials outside the pleadings and the court considers those materials, the motion must be converted into one for summary judgment under Rule 56. Fed. R. Civ. P. 12(d). When the motion is converted, “[a]ll parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.” *Id.* As the Court is being asked to consider evidence outside of the pleadings, it will view the motion as one for summary judgment. Plaintiff is hereby notified that the Motion [11] will be considered as one for summary judgment and she will be given the opportunity to respond accordingly. If Plaintiff desires to submit other evidence in response to the Motion [11], she shall do so on or before

April 24, 2020.

SO ORDERED, this the 7th day of April, 2020.

s/ Michael T. Parker

United States Magistrate Judge